

**REMARKS**

Claims 16-35 were previously pending in the application. By the Amendment, claims 16 and 33 are currently amended. Claims 17-32, 34 and 35 remain unchanged. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

The claims stand rejected under the cited prior art of record. Specifically, claims 16, 17, 22, 24, 25, 27-29 and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa et al. (EP 0 383 222 A2). Additionally, claims 18-21, 26 and 32-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa in view of Cur (U.S. Patent No. 5,377,498). Still further, claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa in view of Mann et al. (U.S. Patent No. 3,018,637), and claim 30 was rejected under 35 U.S.C. §103(a) as being unpatentable over Alsa in view of Sessa et al. (U.S. Published Application No. 2002/0002839).

Independent claim 16 defines a refrigerating appliance including at least two storage compartments thermally insulated from each other and from a surrounding area, and an evaporator, which can be cooled independently from an evaporator of at least one other storage compartment, being provided with each storage compartment. The appliance includes means for switching the mode of operation of at least one of the compartments between a freezing mode and a non-freezing mode.

Independent claim 33 defines a refrigerating appliance including at least two storage compartments thermally insulated from each other and from a surrounding area, and an evaporator that can be cooled independently from an evaporator of at least one

other storage compartment. An evaporator is provided with each storage compartment, where each of the storage compartments is operable in a plurality of operating modes of different temperatures. A mode switch is cooperable with the evaporator and acts to switch the mode of operation of the compartments between the operating modes.

In response to the arguments in the Amendment filed July 20, 2009, the Office Action contends that “the features upon which applicant relies (i.e., a separate evaporator provided with each compartment) are not recited in the rejected claim(s).” Without conceding this contention, independent claims 16 and 33 have been amended to clarify that a separate evaporator is provided with each compartment. With these amendments, Applicants re-assert the arguments from the July 20 Amendment. In summary, in contrast with the claimed invention, the Alsa publication includes an evaporator 6 for the refrigerator and an evaporator 8 for the freezer. The third compartment 10 in Alsa does not include any such evaporator; rather, the third compartment is cooled using controlled air flow between either the freezer or the refrigerator. Applicants thus submit that the rejection of claim 16 is misplaced.

Claims 17, 22, 24, 25, 27-29 and 31 depend from claim 16 and allowable for the same reasons and also because they recite additional patentable subject matter.

Reconsideration and withdrawal of the rejection are respectfully requested.

With regard to the rejection of claims 18-21, 26 and 32-35, Applicants submit that the Cur patent does not correct the deficiencies noted above with regard to Alsa. In particular, Cur discloses a refrigeration system having a single evaporator for cooling multiple refrigeration compartments. Cur references use of the single evaporator

throughout its description. Applicants submit that these claims are thus allowable by virtue of their dependency on an allowable independent claim and also because they recite additional patentable subject matter.

Moreover, claim 18 recites that the switching means are provided for at least two compartments. Without conceding the Office Action's characterization of the Cur patent, Applicants submit that Alsa teaches away from any such modification. As noted, Alsa endeavors to provide a simple and inexpensive construction of a refrigerating device that includes a third compartment adjustable to at least two different temperatures. Alsa achieves this with controlled airflow from the other two compartments. This configuration is important to achieve Alsa's intended goals, and the proposed modification thus contradicts an important feature of the Alsa device. Even under the Supreme Court's *KSR* decision, such a modification is not proper as the Alsa device will no longer perform the same function it did prior to the modification. As a consequence, the results of the proposed modification could not have been predictable. Also, as noted, the Cur system utilizes a single evaporator, which is distinguishable from the claimed invention.

A similar argument can be made with regard to claims 26 and 32. It is directly contrary to Alsa's express teachings to modify its structure such that all compartments can be operated in the same plurality of operating modes, or such that the device additionally includes a second regulator and a second selector switch. Withdrawal of the rejection is requested.

With regard to the rejections of claims 23 and 30, Applicants submit that the Mann patent and the Sessa publication do not correct the deficiencies noted above with regard to Alsa. As such, Applicants submit that these claims are allowable by virtue of their dependency on an allowable independent claim and also because they recite additional patentable subject matter. Withdrawal of the rejection is requested.

**CONCLUSION**

In view of the above, entry of the present Amendment and allowance of Claims 16-35 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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